



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1995

Mr. Donald W. Allee
City Attorney
City of Pharr
801 Nolana, Suite 315
McAllen, Texas 78504

OR95-776

Dear Mr. Allee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30821.

The City of Pharr Police Department (the "city") received two requests for access to accident reports "on a regular basis." You assert that although the city has a records management ordinance and policy which provides copies of specific accident reports upon request, the city does not have a policy which permits individuals to peruse accident reports in general. You inquire as to whether accident reports must be made available for inspection by the requesting entities on a regular basis.

The city is not obliged to keep the requestor informed as new information comes into existence after a request is made. Open Records Decision No. 452 (1986) at 3 (request applies only to information already in existence). However, the city may voluntarily comply with a standing request or the requestor may periodically submit open records requests for current information.

As to automobile accident reports, the city must treat the reports as public information. Under a law that went into effect September 1, 1993, accident reports were made privileged and confidential. The statute provided that such reports could not be released until 180 days after the accident, except to certain categories of individuals. V.T.C.S. art. 6701d §47. However, those provisions were found unconstitutional and unenforceable by the United States District Court for the Southern District of Texas,

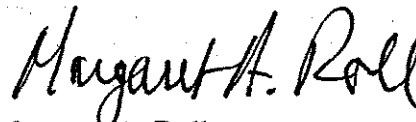
in *Moore v. Morales*, 843 F. Supp. 1124 (S. D. Tex. 1994).¹ When an amendatory act is invalid, either for failure to observe constitutional requirements pertaining to its enactment or for violation of constitutional rights, the amendment is ineffective and the original enactment ordinarily remains in full force and effect. *Culberson v. Ashford*, 18 S.W.2d 585 (Tex. 1929); *see generally* 67 TEX. JUR. 3d *Statutes* §56 (1989). Prior to the 1993 change, section 47 of article 6701d specifically made accident reports public information. *See* Open Records Decision No. 378 (1983) at 2. Therefore, the city must release the accident reports upon request.

You inform us that the city is concerned about complaints by accident victims "who will undoubtedly be contacted by the (requesting) entities - both of which are involved with soliciting business for chiropractors." Such concern can have no bearing, however, on the city's obligation to release accident reports under the Open Records Act. The Act prohibits the inquiry by the governmental body into the motives of the person applying for inspection or copying of records and requires the governmental body to treat each request uniformly. Gov't Code § 552.222, 552.223; Open Records Decision No. 542 (1990).

Finally, you requested that some guidelines be provided so that such record inspections do not interfere with the normal procedures of the Pharr Police Department. Unfortunately, as you did not enclose any material regarding the day to day operations of the department, and as this division deals exclusively with whether or not public records must be released, we are not in a position to offer meaningful suggestions as to how to minimize the interference to the department as it adopts new procedures consistent with the Open Records Act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

¹The court imposed a permanent injunction against enforcement of article 6701d, sections 47(a), (b), (c), and (f), V.T.C.S. (concerning release of accident reports for 180 days after accident); and against enforcement of Penal Code sections 38.12 (d)(2)(A), (B), (C) and (D) (prohibiting certain persons from written contact with various individuals, including those involved in an accident, for a 30 day period after the accident).

MAR/PIR/rho

Ref.: ID# 30821

Enclosures: Submitted documents

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